Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Universal Service Reform	)	WT Docket No. 10-208
	)	
Mobility Fund	)	

COMMENTS OF SPRINT NEXTEL CORPORATION

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Summary

Sprint applauds the Commission's commitment to promoting mobile voice and Internet service for consumers in areas where such coverage is currently not available or is inadequate. In order to encourage broad participation in the program and thus maximize the benefits to consumers of the proposed Mobility Fund, the Commission should adopt reverse auction procedures, eligibility requirements, and compliance obligations which are reasonable in light of the limited size, scope and duration of this fund.

Sprint recommends that the Commission run multiple reverse auction Mobility Fund pilot programs -- one based on "winner takes all"; one based on "winner takes more"; and perhaps a third that supports multiple carriers. Prior to initiation of the bidding process, the Commission should explicitly prescribe the specifics of the auction, and stagger the bidding into specific geographic tranches. Sprint also recommends that the Commission allow carriers that have applied for a Mobility Fund-specific ETC designation (which would have compliance obligations different from those that attach to existing high-cost ETC designations) to participate in the bidding process.

Sprint also recommends changes to several of the proposed post-distribution compliance requirements. The Commission should:

- Not adopt a requirement that winning bidders "actively market" their service, as such requirement is unnecessary, vague, and unenforceable.
- Adopt coverage targets, not actual subscribership take rates.
- Require Mobility Fund recipients to offer data roaming and collocation on reasonable terms and conditions.
- Require 3G (not 4G) data rates.
- Interpret the "reasonably comparable" rate requirement broadly.

- Recognize that many factors affect mobile performance rates, and either define drive tests intended to measure performance very precisely so that "success" can be defined with some accuracy, or, if the test parameters are more general, allow considerable leeway in determining when a Mobility Fund carrier is considered to have satisfied the requisite performance standard.

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Sprint Nextel Corporation ("Sprint") hereby respectfully submits its comments on the Notice of Proposed Rulemaking ("NPRM") released on October 14, 2010 (FCC 10-182) in the above-captioned proceeding. In this proceeding, the Commission has asked for comments on the adoption and implementation of the proposed Mobility Fund – its design, eligibility requirements, and management and oversight – and on a reverse auction mechanism by which Mobility Fund support will be distributed.

Sprint applauds the Commission's commitment to promoting mobile voice and Internet service for consumers in areas where such coverage is currently not available or is inadequate. Consumers increasingly are turning to mobile communications to meet their voice and data needs, and carefully targeted support to promote competitive mobile service in those geographic pockets where adequate coverage is not currently available is in the public interest. Sprint believes that consumer welfare will be maximized by providing multiple wireless service providers with the opportunity to participate in the Mobility Fund program, and by implementing adequate measures to minimize potential waste, fraud and abuse in the program. On the other hand, given the relatively modest size of this fund ($100 – $300 million)[1] and its very limited scope and duration (Mobility Fund support can only be used for capital expenditures, and the fund will not be replenished once the specified dollars have been distributed),[2] the requirements for participating in the program and any post-distribution compliance obligations must be reasonable. In order to balance the benefits and obligations associated with participation in the Mobility Fund program, Sprint discusses below refinements in three areas -- reverse auction procedures; eligibility requirements; and post-distribution compliance requirements.

1. Reverse auction procedures

The Commission has proposed to identify unserved areas eligible for support by census blocks grouped by census tracts, and to distribute Mobility Fund support based on the lowest per-unit bids across all areas, in a single round of reverse auction bidding.[3] As an initial matter, Sprint reiterates its concern that choosing a single carrier to receive Mobility Fund support in a given geographic area could well limit or even foreclose the possibility of competitive entry and expansion in those areas, and thereby deny consumers in those areas the benefits of competition.[4] To help evaluate the impact of a reverse auction mechanism, Sprint suggests that the Commission use the Mobility Fund to run multiple pilot programs – one based on a "winner takes all" approach; another based on "winner takes more"; and perhaps a third that supports multiple carriers. The

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[1] NPRM, para. 5.
[2] NPRM, paras. 13-14.
[3] NPRM, paras. 18 and 20.
[4] *See, e.g.,* Sprint's comments in the matter of Connect America Fund (WC Docket No. 10-90), A National Broadband Plan for Our Future (GN Docket No. 09-51), and High-Cost Universal Service Support (WC Docket No. 05-337), filed July 12, 2010, pp. 8-11.

results from these alternative approaches could provide valuable insight into an appropriate and effective auction mechanism.

To help ensure a smooth bidding process, Sprint offers the following comments. First, prior to initiating a reverse auction, the Commission must explicitly prescribe the specifics of the bidding process to ensure that competing bids are comparable and that each bidder is working off the same baseline population and coverage assumptions. The Commission must set forth such factors as:

- the "per unit" basis on which all bids are to be submitted;
- the number of "units" in each census tract (alternatively, the Commission could identify the database containing such information on which bidders should rely);
- each census tract grouping that is to be bid upon;
- whether cost (the lowest bid) will be the only factor in determining the winning bidder.[5]

Second, Sprint proposes that the Commission solicit bids in specific geographic tranches (*e.g.*, bids for census tracts 1-10 due January 31, census tracts 11-20 due February 28, census tracts 21-30 due March 31, etc.). Staggering the bidding allows potential service providers to prepare their bids over time rather than all at once – a relevant consideration for those carriers that lack the resources to evaluate and prepare cost estimates for all eligible census tracts simultaneously. Assuming that the bids are made public after each tranche, staggering the bidding process also would allow actual

[5] Competitive bidding rules can vary. For example, in the E-rate program, cost must be the *primary* factor in choosing a service provider via competitive bidding, but the customer may also take into consideration other factors such as the service provider's experience and personnel capability, cost of changing service providers, etc. *See, e.g.*, <http://www.usac.org/sl/applicants/step04/construct-evaluation.aspx>

and potential bidders the opportunity to evaluate their likelihood of success,[6] and would give interested parties a very rough idea of how many census tracts the available Mobility Fund dollars may cover. After bids on the final tranche are submitted, the Commission could still rank the bids received in all tranches and fund only the lowest bids.

2. Eligibility requirements

The Commission has proposed that entities wishing to receive Mobility Fund support must, among other things, be designated or have applied for designation as a wireless Eligible Telecommunications Carrier ("ETC").[7] Sprint agrees that mobile service providers should be allowed to submit a Mobility Fund bid so long as they have applied for ETC designation (even if such applications are still pending), with the understanding that a winning bidder forfeits its Mobility Fund support if its ETC application is denied. This would avoid penalizing a carrier for administrative or other delays in the designation process that are beyond the carrier's control. Allowing ETC applicants to submit a bid will increase the pool of potential bidders, which in turn is likely to generate better results (*e.g.*, more aggressive bids) than if only one or two carriers are able to participate.

In light of the Mobility Fund's very limited scope and scale, Sprint also proposes that the Commission establish a "Mobility Fund-specific ETC" designation which has streamlined mobility funding-appropriate requirements[8] that are different from those that

[6] For example, if the lowest bid for a given area is $100 per unit, a carrier which has submitted a unit bid of $1000 might re-evaluate its costs and/or bidding strategy (including whether to participate at all) for subsequent bidding tranches.
[7] NPRM, para. 45.
[8] See p. 10 for a discussion of Sprint's proposed reporting and certification requirements for a Mobility Fund-specific ETC.

attach to existing high-cost USF ETC designation. Designation as a high-cost ETC comes with numerous on-going reporting, certification, and other obligations which are not relevant to a Mobility Fund support recipient. For example, a Mobility Fund recipient should not have to comply with high-cost ETC regulations such as the following:

- submission of an annual progress report and 5-year forecasted service improvement plan;
- Lifeline and Link-Up obligations;
- submission of line counts in areas in which it had received Mobility Fund support;
- certain company and state commission high-cost certifications;
- submission of report on complaints per 1000 handsets.

Limiting ETC designation to allow participation in only one federal universal service program is already allowed in the Low Income USF, with some success. Multiple prepaid wireless carriers have been designated as ETCs solely for the purpose of providing Lifeline services,[9] and their participation in the low income USF has helped to boost Lifeline subscribership from 6.9 million in 2008 to almost 9.5 million customers in 2010.[10]

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[9] The first Lifeline-only ETC designation was granted to TracFone Wireless (see *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Designation as an ETC in the State of New York et al.*, 23 FCC Rcd 6206 (2008)). Lifeline-only ETC designations have since been granted to Virgin Mobile and several other service providers.

[10] See Universal Service Monitoring Report released December 31, 2009, Table 2.6; 2010 data from USAC form LI08 (first quarter 2011 appendices), available at http://www.usac.org/about/governance/fcc-filings/2011/quarter-1.aspx.

3. Post-distribution compliance

The Commission has asked for comment on a number of post-distribution performance and reporting obligations with which a Mobility Fund recipient would have to comply. While certain measures are necessary to minimize waste, fraud and abuse, the Commission must avoid imposing excessive burdens which have the effect of discouraging carriers from participating in this new program. Sprint discusses below several proposed post-distribution obligations which are excessive or unnecessary.

First, the Commission has asked whether it should require winning bidders "to actively market their service in the area(s) for which they bid."[11] The answer to this question is no. A carrier incurs both operating and capital expenses in providing service. Because the Mobility Fund will cover only capital expenses, the winning bidder has every incentive to actively market its service in order to sign up as many subscribers as quickly as possible in order to recoup its operating expenses and maximize its profits. Any regulatory requirement to "actively market" service is not only unnecessary; it also is so vague as to render compliance impossible to evaluate, and would in any case likely be unenforceable.

Second, the Commission has asked whether it should require winning bidders "to provide service to a specified number or percentage of consumers in such areas by certain milestone dates."[12] If by this question, the Commission is proposing to set actual subscribership targets, the answer must be no. There can be no guarantee that a carrier will successfully sign up or retain a specified number or percentage of consumers in a

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[11] NPRM, para. 35.
[12] NPRM, para. 35.

given area; actual subscribership will be determined by many factors beyond the service provider's control (such as prevailing economic conditions – a weak economy or particularly uncertain local conditions are likely to reduce take rates and increase disconnect rates) as well as the attractiveness of the mobile offering vis-à-vis wireline Internet access service offerings, which are likely to be subsidized as well and probably even more heavily so.

However, the Commission can and should adopt coverage requirements – that is, require the winning bidder to *offer* and *be able to provide* service to a specified percentage of subscribers by milestone dates. If the Commission does adopt such coverage requirements, it must specify what those requirements are at the start of the auction process so that bidders can factor such milestones into their cost estimates.

Third, the Commission has proposed that use of Mobility Fund support "be conditioned on providing data roaming on reasonable and not unreasonably discriminatory terms and conditions on 3G and subsequent generations of mobile broadband networks that are built through Mobility Fund support," and that new towers "constructed to satisfy Mobility Fund performance obligations provide the opportunity for collocation."[13] Sprint supports both of these proposed conditions. Particularly if Mobility Fund support is distributed to only one provider per market, data roaming and collocation conditions will help foster competition in markets in which entry by multiple service providers in competition with the subsidized carrier might otherwise be economically infeasible. However, here again, the Commission should specify what

[13] NPRM, para. 36.

collocation rules apply (*e.g.,* what costs are collocators required to cover, and what costing standard applies) so that carriers can take these obligations under consideration in preparing their bids.

Fourth, the Commission asks whether it should require networks supported by Mobility Fund dollars "to provide data rates comparable to 4G networks."[14] Such a requirement should not be adopted. The Commission's stated goal for the Mobility Fund is to ensure at least *3G* coverage. It is not reasonable to base funding on 3G costs and technology, but to demand performance at a higher (and potentially more expensive) technological level.

Fifth, the Commission asks how to ensure that rates available to consumers in rural, insular, and high cost areas are "reasonably comparable" to rates charged for similar services in urban areas.[15] Because the Mobility Fund will provide support only for capital expenditures, but not operating expenditures, any measure of "reasonable comparability" should be fairly broad. It is possible that certain service providers may decide to offer service in high-cost or rural areas at the same rates as they charge customers in urban areas, for reasons of administrative and marketing simplicity. In other situations, it may be that "reasonable comparability" involves charging consumers in rural areas a rate somewhat higher than those available in low-cost areas. Sprint suggests that rates be considered reasonably comparable if they are within 3 standard deviations from the carrier's average urban rate. In certain extreme situations (such as areas with high intercarrier compensation rates that have been targeted by entities

[14] NPRM, para. 37.
[15] NPRM, para. 38.

engaged in traffic pumping schemes), such rate comparability standards may have to be lifted completely.

Section 54.316 of the Commission's Rules specifies a safe harbor for purposes of certifying that residential rates in rural areas served by non-rural carriers are reasonably comparable to urban rates. This safe harbor standard presumes reasonable comparability if the rural rate is below the nationwide urban rate benchmark, which in turn is defined as the "most recent average urban rate plus two weighted standard deviations" (*see* Section 54.316(b)). Because the Mobility Fund does not provide full universal service support (*e.g.,* for operating expenses), it is reasonable to incorporate slightly more leeway in defining "reasonable comparability" under the Mobility Fund as compared to the standard that is applied for the existing voice high-cost fund.[16]

Sixth, the Commission proposes to require Mobility Fund recipients to prove they have deployed a network that is capable of meeting minimum standards based on the result of drive tests.[17] While Sprint believes that drive tests can be a useful tool for measuring wireless network performance, we caution that test results can vary dramatically based on many variables – the type of handset or other mobile device used, weather conditions, topography, type of application (voice call vs. large data file transfer), network congestion, type of protocol used (HTTP, FTP or UDP, each of which involves potentially very different latency rates), server location, distance from the tower,

[16] Alternatively, the Commission could allow discount vouchers directly to consumers in areas where the rural rate exceeds a reasonably comparable urban rate. Because vouchers are likely to affect take rates, the Commission would have to decide whether to adopt this approach prior to implementation of the bidding process so that carriers can take this factor into consideration in preparing their bids.

[17] NPRM, para. 40.

structures and/or obstructions, and use of syndicated versus directed drives,[18] to name only a few. Thus, the Commission must either precisely define the drive test methodology so that "success" (compliance with the specified performance standards) can be defined with some accuracy; or, if the test parameters are more general, allow considerable leeway in determining when a Mobility Fund carrier is considered to have satisfied the requisite performance standard.

Finally, as noted above, Sprint proposes that the Commission adopt a Mobility Fund-specific ETC designation category. A carrier that is so designated should be required to certify (subject to audit) that it had used its Mobility Fund support only for the installation or upgrading of facilities for which the support was intended, and that it had met the requisite performance measures by the milestone dates. Furthermore, because the proposed Mobility Fund relates only to capital expenditures, reporting and certification requirements should sunset within three years after expenditure of the support dollars received.

[18] Under a syndicated drive, which generally tests performance of multiple service providers in a given area, an independent third party defines the test parameters and chooses the test equipment. Under a directed drive, which is generally used to test performance of a single network, the carrier paying for the test specifies the test parameters (methodology, drive path, test equipment, etc.).

Respectfully submitted,

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